IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 32811 of 2005(F)

PETITIONERS:

1. **UMAYAMMA @ UMA NAYAR, W/O.LATE S.V.NAYAR, RESIDING AT OR NO.1474, ST.38, SECTOR IX/D, P.S.HARLA, B.S.CITY, DISTRICT BOKARO, JHARKHAND.**

2. **VIJI, D/O.LATE S.V.NAYAR, RESIDING AT OR NO.1474, ST.38, SECTOR IX/D, P.S.HARLA, B.S.CITY, DISTRICT BOKARO, JHARKHAND.**

BY ADV. SRI.S.SANAL KUMAR
SRI.M.R.ARUN KUMAR

RESPONDENTS:

1. **JAYANT KUMAR, S/O.SRI.ASHOK KUMAR SINGH, RESIDING AT OR.NO.1391, SECTOR IX/A, ST.7, B.S.CITY, P.S.HARLA, DISTRICT BOKARO.**

2. **ASHOK KUMAR SINGH, S/O.LATE AJAB NARAYAN SINGH, RESIDING AT OR.NO.1391, SECTOR IX/A, ST.7, B.S.CITY, P.S.HARLA, DISTRICT BOKARO.**

.2/-

* 3. STATE OF BIHAR,
REPRESENTED BY THE CHIEF SECRETARY,
PATNA.(NAME AND ADDRESS CORRECTED)

* STATE OF JHARKHAND,
REPRESENTED BY CHIEF SECRETARY, RANCHI.

(*ADDRESS OF THE 3RD RESPONDENT CORRECTED AS PER ORDER DTD. 20/01/06 IN I.A.1089/06)

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.32811/2005 F

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE COMPLAINT C.P.CASE NO.336 OF 2005 FILED BEFORE THE CHIEF JUDICIAL MAGISTRATE, BOKARO DTD. NIL.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 32811 OF 2005

Dated this the 24th day of July , 2007

JUDGMENT

This writ petition under Article 227 of the Constitution has been filed by the petitioners, who are accused Nos. 2 and 3 in C.P.Case.No.336/2005 on the files of the Chief Judicial Magistrate's Court, Bokaro in Bihar for quashing the complaint, a copy of which is Ext.P1 in this writ petition. The accusation against the petitioners is that they along with accused Nos. 1 and 4 are guilty of offence punishable under Section 138 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code. The petitioners are respectively the mother and sister of accused No.1. The quashment of the complaint is sought for mainly on the ground that even the allegations in the complaint do not make out any offence against the petitioners.

2. I have heard the submissions of Sri.S.Sanal Kumar, the learned counsel for the petitioners and also those of the learned

Public Prosecutor. Placing strong reliance on the judgment of the Supreme Court on **S.M. S.Pharmaceuticals Ltd. v. Neeta Bhalla And Another (2005) 8 Supreme Court Cases 89)**, the learned counsel for the petitioners would submit that the essential averments to make out a case against the petitioners who are alleged to be partners of the first accused under under Section 141 of the Negotiable Instruments Act are absent in Ext.P1 complaint and, therefore, the complaint is liable to be quashed . The full text of Ext.P1 was read over to me by the learned counsel who drew my attention to Section 141 of the Negotiable Instruments Act. Counsel submitted that the cheque in respect of which offence under Section 138 is alleged is admitted in the complaint itself to be drawn not on the account of the firm but on a joint account of accused Nos.1 and 4. The counsel also submitted that it is not stated at all in the complaint that the petitioners are in charge of the affairs of the firm. The above submissions of the learned counsel certainly have merit, but I notice that under Ext.P1 complaint offence under Section 420 of the Indian Penal Code is also alleged. Of course the learned counsel argued that offence under Section 420 is also not

made out by the averments in the complaint. This aspect of the matter is to be considered by the Learned Magistrate.

3. Under the above circumstances, I permit the petitioners to file an application before the learned Magistrate through their Advocate in the court below for a preliminary hearing of the matter regarding the maintainability of the complaint and for their discharge on the ground that the offences alleged against them are not made out even on the averments of the complaint. If the petitioners file an appropriate application before the learned Magistrate as indicated herein above within one month of their receiving a copy of this judgment, the learned Magistrate will hear the petitioners through the counsel and pass orders thereon within another one month thereafter. Considering the above directions and the merit noticed by him in the submissions of the learned counsel for the petitioners regarding the offence alleged under Section 138 of the Negotiable Instruments Act, I exempt the petitioners from personally appearing before the learned Magistrate till orders are passed by the learned Magistrate on the application suggested as above. I am sure that the learned Magistrate will insist on the personal appearance

of the accused petitioners only when the same is absolutely necessary even if the decision on the application comes to be against the petitioners.

The writ petition is disposed of as above. No costs.

PIUS C. KURIAKOSE,

JUDGE.

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